

Ms. Donna R. Searcy  
December 12, 1991  
Page 2

allegations are erroneous. In fact, Assignee appears to ignore the crux of Scripps Howard's opposition, namely that the above-referenced applications are part of a faulty assignment of Television Broadcast Station WBFF, Baltimore, Maryland.

Specifically, Assignee represented to the Commission that the above-referenced private microwave stations assist in the operations of Television Station WBFF and that therefore, the proposed private microwave assignments are part of the overall assignment of Television Station WBFF. This overall assignment of Television Station WBFF, however was not an assignment at all. In fact, the transaction violates numerous Commission Rules and policies. It was on this basis that Scripps Howard opposed the main license assignment.

Scripps Howard delineated its basis for opposing the main license assignment in its informal objection to the private microwave license assignment applications so that the Microwave Branch would be on notice that the main portion of the assignment was defective. This fact is relevant in that here the assignment of the private microwave station licenses is merely the concluding step in the assignment of the main station license. Therefore, if the main license assignment application cannot be granted because it violates the Commission's Rules then it follows that the secondary license assignment should not be granted.

Finally, Assignee appears to be equally confused as to what aspect of the main license assignment transaction Scripps Howard believes to be defective. Assignee states that "[i]t is absurd to suggest in this case that the assignor may not retain control over an assignee corporation that is wholly owned by that shareholder." Assignee Letter of November 27, 1991, para. 6. Scripps Howard, however, is not opposing the main license assignment application on the basis of who actually controls the assignee. Rather, Scripps Howard is objecting to the assignment on the grounds that the transaction results in a licensee solely of record, since the entity listed in the Commission's records as the licensee is not the entity which is exercising ultimate control over the operation of the station.

Assignee in its opposition appears to be alleging that since the individuals involved in the main license transaction remain the same, the identity of the particular licensee entity is irrelevant. The Commission's Rules, however, reveal that this proposition is erroneous. Section 73.3540 of the Commission's Rules requires that the parties to any "assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests" file an FCC "Short Form" 316, requesting Commission consent prior to the assignment. 47 C.F.R. § 73.3540(a), (f)(5). Consequently, since the Commission

Ms. Donna R. Searcy  
December 12, 1991  
Page 3

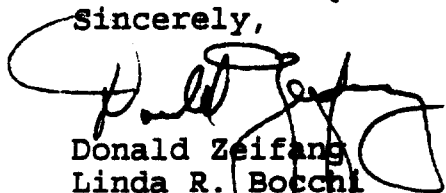
prohibits assignments from one entity to a commonly owned or controlled entity without prior Commission consent, it is clear that the Commission does not view commonly owned entities as interchangeable licensees.

Moreover, over the years it has been well established by the courts and the Commission that the principal indicia of control, examined to determine who exercises ultimate control over the license, are finances, personnel matters and programming. It was as authority for these guidelines that Scripps Howard cited Southwest Texas Broadcast Council, 85 F.C.C.2d 713, 715 (1981). Notably the main license assignment application describes a transaction that results in an entity other than the assignee exercising ultimate control over the programming, personnel, operations, maintenance, finances and policies of the stations. See Chesapeake Assignment and Use Agreement, para. 2. Therefore the consummation of the transaction results in an entity other than the assignee controlling the license. The fact that the same four individuals are principals of all the entities involved in this transaction does not address the issue as to which entity ultimately controls the license.

In summary, a review of Assignee's applications and its opposition reveals that the main transaction, of which the assignment of the private microwave licenses is but a concluding step, is not a valid assignment. In its filings, Assignee has not even attempted to establish the validity of an assignment which results in the assignor entity retaining ultimate control over the operation of the station. Instead, Assignee makes muddled and groundless procedural arguments. Assignee further attempts to confuse the matter by misconstruing the substantive issues raised by Scripps Howard in its informal opposition.

Consequently, in view of the foregoing, Scripps Howard renews its request that the Commission deny the private microwave assignment applications.

Sincerely,



Donald Zeifang  
Linda R. Bocchi  
Counsel for Scripps Howard  
Broadcasting Company

cc: Michael B. Hayden  
Chief, Microwave Branch  
Martin R. Leader, Esq.  
Counsel for Chesapeake Television, Inc.



3070-007  
RECEIPT COPY

LAW OFFICES

FISHER, WAYLAND, COOPER AND LEADER

1255 TWENTY-THIRD STREET, N.W.

SUITE 800

WASHINGTON, D. C. 20037-1170

TELEPHONE (202) 659-3494

TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

(202) 775-3788

April 7, 1992

RECEIVED

APR 7 - 1992

Federal Communications Commission  
Office of the Secretary

BEN C. FISHER  
ROVER C. COOPER  
MARTIN R. LEADER  
RICHARD R. ZARAGOZA  
CLIFFORD M. HARRINGTON  
JOEL R. KASWELL  
KATHRYN R. SCHMELTZER  
DOUGLAS WOLOSHIN  
BRIAN R. MOIR  
DAVID D. OXENFORD  
BARRY H. GOTTFRIED  
ANN K. FORD  
BRUCE D. JACOBS  
ELIOT J. GREENWALD  
CARROLL JOHN YUNG  
JOHN JOSEPH MCVEIGH  
BARRIE D. BERMAN  
JOHN K. HANE III  
BRUCE F. HOFFMEISTER  
SCOTT R. FLICK  
FRANCISCO R. MONTERO  
GREGORY L. MASTERS\*  
MATTHEW P. ZINN  
ROBERT C. FISHER  
LAUREN ANN LYNCH  
BRIAN J. CARTER  
GLENN S. RICHARDS\*  
KELLY D. YAKSICH\*  
ANDREW W. SHROYER\*

\*NOT ADMITTED IN D.C.

VIA HAND-DELIVERY:

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

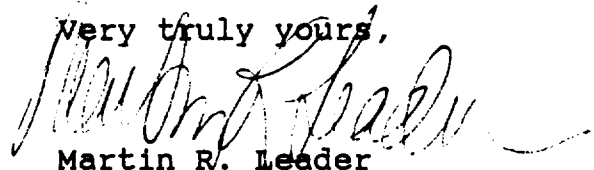
Re: FCC File No. BALCT-910926KM, Granted October 7, 1991  
FCC File No. BALCT-910926KN, Granted October 7, 1991

Ms. Donna Searcy  
April 7, 1992  
Page 2

Prompt resolution of the issues is important because the Private Radio Bureau is not acting on applications filed to modify existing private operational fixed microwave facilities so that WBFF can be linked to the Baltimore Orioles new ball park at Camden Yards. The filing of the Petition for Reconsideration and the Informal Objection based on it is impeding WBFF's ability to serve the public interest.

Since the pleading cycle on these two filings by Scripps Howard closed on December 12, 1991, the matter is now ripe for action. WBFF believes that the Commission has before it all of the information necessary to act on the above-referenced Petition for Reconsideration and Informal Objection and requests that the Commission do so promptly.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Martin R. Leader", is written over the typed name. The signature is fluid and cursive.

Martin R. Leader

MRL/dp  
3070-007

cc: Clay Pendarvis, Esq. (by hand)  
Michael B. Hayden, Esq. (by Federal Express)  
Donald P. Zeifang, Esq. (by U.S. Mail)



FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

APR 10 1992

IN REPLY REFER TO:

8940-AEG

Scripps Howard Broadcasting Company  
c/o Donald Zeifang, Esq.  
Baker & Hostetler  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Dear Mr. Zeifang:

This is in reference to your petition for reconsideration filed upon behalf of Scripps Howard Broadcasting Company (Scripps), of the grant of the pro forma applications (FCC Form 316, BALCT-910926KM-KO) assigning the licenses of television stations WBFF, Baltimore, Maryland, from Chesapeake Television, Inc. to Chesapeake Television Licensee, Inc.; WTTE, Columbus, Ohio, from WTTE, Channel 28, Inc. to Channel 28 Licensee, Inc.; and WPGH-TV, Pittsburgh, Pennsylvania, from Sinclair Broadcast Group, Inc. to WPGH Licensee, Inc. Chesapeake Television, Inc., WTTE, Channel 28, Inc., and Sinclair Broadcast Group, Inc. are referred to collectively as Assignor. Each transaction moved the license from the current licensee to a subsidiary, with the principals and shareholders of the holding company remaining in control. The applications, which were filed on September 26, 1991 and which were accepted for filing on October 4, 1991, were approved on October 7, 1991. Scripps, which is licensee of television station WMAR-TV, Baltimore, Maryland, requests that the grant of these applications be rescinded.

In support of its request, Scripps initially states that the applications were incomplete because the underlying agreements supporting the transactions were not filed with the applications. Thus, Scripps asserts that the applications should have been returned as unacceptable for filing, citing FCC Form 316, General Instructions, paragraph H. Even if this were not enough to support its request, Scripps contends that the agreements, which were subsequently filed, reveal that the assignor will retain ultimate control over the programming, personnel and financial operations of the stations affected. Thus, it contends that this is not a valid assignment because the assignor will retain control of the stations, citing Southwest Texas Public Broadcast Council, 85 FCC2d 713, 715 (1981).

Additionally, because it appears that the assignor will retain ultimate control over these stations, Scripps argues that the transactions violate Section 73.1150 of the Commission's Rules. Section 73.1150 prohibits retention of an interest in a station once it has been assigned, prohibits the assignor from claiming a right to future assignment of the station, or prohibits the assignor from reserving a privilege to use broadcast facilities once the station has been sold.

In its opposition, the Assignor states that Scripps has not demonstrated how it has standing in this matter and has not indicated how it is aggrieved by the Commission's action. It also notes that since these transactions were filed using the FCC Form 316 application, because no substantial change in ownership or control would result, the filing of petitions to deny are not permitted. Sections 309(c)(2)(b) and 309(d)(1) of the Communications Act. Thus, it contends Scripps has no right to file a petition for reconsideration, since it has not shown how it has been affected by the Commission's decision.

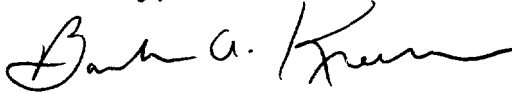
Nonetheless, turning to the arguments raised, the Assignor states that since the transactions are pro forma in nature (no substantial change in ownership or control will result), and since the assignors and assignees are owned, either directly or indirectly, through wholly-owned subsidiaries, by the same four principals (David D. Smith, J. Duncan Smith, Robert E. Smith and Frederick G. Smith), Southwest Texas Public Broadcast Council is inapplicable. The Assignor further asserts that the Commission has been granting applications, such as those it has filed, for years and the concerns that Scripps raises are more appropriate for a rule making proceeding.

We agree with the Assignor that Scripps Howard has failed to show how it has been aggrieved, pursuant to Section 405 of the Communications Act and Section 1.106 of the Commission's Rules, by our action approving these applications. We also agree with the Assignor that the filing of these applications and their subsequent grant is consistent with Commission rules and policies. In that regard, Section 73.3540(f)(5) of the Commission's Rules permits the filing of short-form applications (FCC Form 316) when there is no substantial change in the interests of the controlling shareholders. In the context of a corporate reorganization, where a license is assigned from a parent to a subsidiary, we understand that ultimate control will remain with the parent and its shareholders. Concerns about retention of control by the parent is not only permitted, but required in this context. We also understand that possible "reversions" of the license to the parent are possible. The reversionary interest rule is intended, in part, to assure the independence of the current licensee from an independently controlled former licensee. That concern is not present in corporate reorganizations such as are presented in the case before us here. Thus, the reversionary-interest rule is inapplicable in this case.<sup>1</sup>



Accordingly, for the reasons stated above, the petition for reconsideration filed on behalf of Scripps Howard Broadcasting Company is denied, and the grant of the pro forma applications (BALCT-910926KM-KO) involving television stations WBFF, Baltimore, Maryland; WTTE, Columbus, Ohio; and WPGH-TV, Pittsburgh, Pennsylvania, is affirmed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barbara A. Kreisman".

Barbara A. Kreisman  
Chief, Video Services Division  
Mass Media Bureau

CC: Martin R. Leader, Esq.



LAW OFFICES

## FISHER, WAYLAND, COOPER AND LEADER

1255 TWENTY-THIRD STREET, N.W.

SUITE 800

WASHINGTON, D. C. 20037-1170

TELEPHONE (202) 659-3494

TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

(202) 775-3788

February 11, 1992

BEN C. FISHER  
 GROVER C. COOPER  
 MARTIN R. LEADER  
 RICHARD R. ZARAGOZA  
 CLIFFORD M. HARRINGTON  
 JOEL R. KASWELL  
 KATHRYN R. SCHMELTZER  
 DOUGLAS WOLOSIN  
 BRIAN R. MOIR  
 DAVID D. OXENFORD  
 BARRY H. GOTTFRIED  
 ANN K. FORD  
 BRUCE D. JACOBS  
 ELIOT J. GREENWALD  
 CARROLL JOHN YUNG  
 JOHN JOSEPH McVEIGH  
 BARRIE D. BERMAN  
 JOHN K. HANE III  
 BRUCE F. HOFFMEISTER  
 MICHELLE N. PLOTKIN  
 SCOTT R. FLICK  
 FRANCISCO R. MONTERO  
 GREGORY L. MASTERS\*  
 MATTHEW P. ZINN  
 ROBERT C. FISHER  
 LAUREN ANN LYNCH\*  
 BRIAN J. CARTER  
 GLENN S. RICHARDS\*  
 KELLY D. YAKSICH\*

BEN S. FISHER  
 (1890-1954)

CHARLES V. WAYLAND  
 (1910-1980)

OF COUNSEL  
 JOHN O. HEARNE

MCI MAIL: FWCLDC

\*NOT ADMITTED IN D.C.

VIA HAND-DELIVERY:

Ms. Donna Searcy  
 Secretary  
 Federal Communications Commission  
 1919 M Street, N.W.  
 Washington, D.C. 20554

RECEIVED

FEB 11 1992

Federal Communications Commission  
 Office of the Secretary

Re: FCC File No. BPH-911206IF

Dear Ms. Searcy:

This letter is written on behalf of Cunningham Communications, Inc., the owner of the tower specified in the above-referenced application. It has come to our attention that Nationwide Communications, Inc. ("Nationwide"), a lessee of antenna space on our tower, without knowledge or notice to us as the lessor/owner, has volunteered an application, the purpose of which is "to report a decrease in the height of the antenna supporting structure." (We have been advised that to effect a reduction in tower height no application is necessary.)

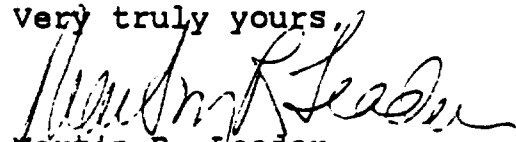
The purpose of this letter is to request that the Commission not change its database with regard to the height of the antenna structure because there is pending an application BPCT-910903KE which proposes to use the antenna structure presently authorized. We have been advised by the Commission staff that no notification with respect to tower height is necessary where there is a pending application to use the full height of the tower.

Nationwide, the party seeking to change the Commission's database is not the owner of the tower. Therefore its

Ms. Donna Searcy  
February 11, 1992  
Page 2

application should be dismissed because it had no actual or apparent authority for making its filing and because there is a pending proposal to use the full height of the present structure.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Martin R. Leader", written in a cursive style.

Martin R. Leader

MRL/dp  
3070-014

cc: Edward W. Hummers, Jr., Esq.



MANIA K. BAGHDADI  
ANNE GOODWIN CRUMP  
VINCENT J. CURTIS, JR.  
THOMAS J. DOUGHERTY, JR.  
JAMES G. ENNIS  
RICHARD HILDRETH  
EDWARD W. HUMMERS, JR.  
FRANK R. JAZZO  
BARRY LAMBERGMAN  
PATRICIA A. MAHONEY  
GEORGE PETRUTSAS  
ROBERT D. PRIMOSCH  
LEONARD R. RAISH  
JAMES P. RILEY  
DAVID N. ROBERTS\*  
MARVIN ROSENBERG  
STEPHEN R. ROSS  
TIMOTHY R. SCHNACKE\*\*  
LONNA M. THOMPSON  
HOWARD M. WEISS

\*ADMITTED IN TEXAS ONLY  
\*\*ADMITTED IN KANSAS ONLY

## FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

SUITE 400, 1225 CONNECTICUT AVENUE, N.W.

WASHINGTON, D.C. 20036-2579

(202) 828-5700

TELECOPIER NUMBER

(202) 828-5786

PAUL D.P. SPEARMAN  
(1938-1982)  
FRANK ROBERSON  
(1938-1981)

RETIRED  
RUSSELL ROWELL  
EDWARD F. KENEMAN  
ROBERT L. HEALD  
FRANK U. FLETCHER

SPECIAL COUNSEL  
JAMES L. HOFFMAN, JR.

TELECOMMUNICATIONS CONSULTANT  
HON. ROBERT E. LEE

WRITER'S NUMBER  
(202) 828-

5760

February 18, 1992

Mr. Dennis Williams  
Mass Media Bureau  
Federal Communications Commission  
Room 332  
1919 M St. NW  
Washington, D.C. 20554

Re: FM Station WPOC, Baltimore, MD  
File No. BPH-91206IF

Dear Mr. Williams:

By letter of February 11, 1992, counsel for Cunningham Communications, Inc., submitted the letter attached hereto with regard to the above referenced pending application of Nationwide Communications Inc. Cunningham states that the WPOC "application should be dismissed because it had no actual or apparent authority for making its filing and because there is a pending proposal to use the full height of the present structure."

WPOC is located on a tower owned by Cunningham and upon which the antenna for WBFF, Channel 45, was formerly top-mounted. As the Channel 45 antenna was removed, thereby causing a reduction in the overall height of the structure upon which WPOC is located, Nationwide filed the subject application pursuant to Section 73.1690(b)(1) of the rules which requires the filing of a Form 301 for "any change in the . . . overall height of [the] antenna structure." Pursuant to Question 5 of Section V-B of Form 301, Nationwide also advised the FAA of the reduction in tower height.

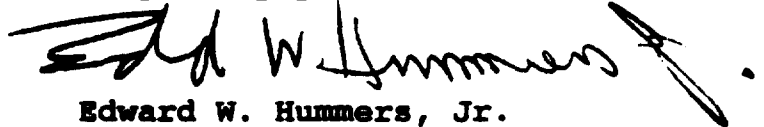
It is the contention of Cunningham that the WPOC application is unnecessary because there is pending an application to use the antenna structure for the antenna of a new television station (BPCT-910903KE). At the time Nationwide filed the subject application it was unaware of the pending television station application as it had not been advised of the filing by either the applicant or Cunningham.

Page -2-

Please advise whether the subject application is required under the Commission's rules and, in the event you determine that no application is required, please issue a refund for the filing fee paid when the application was filed.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ed W. Hummers, Jr.", with a stylized flourish at the end.

Edward W. Hummers, Jr.  
Counsel for  
Nationwide Communications Inc.

EWH/sj

Enclosure

cc: Martin R. Leader, Esquire (w/enc.)  
Donald P. Zeifang, Esquire (w/enc.)

LAW OFFICES

**FISHER, WAYLAND, COOPER AND LEADER**

1255 TWENTY-THIRD STREET, N.W.

SUITE 800

WASHINGTON, D. C. 20037-1170

TELEPHONE (202) 659-3494

TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

(202) 775-3788

BEN C. FISHER  
GROVER C. COOPER  
MARTIN R. LEADER  
RICHARD R. ZARAGOZA  
CLIFFORD M. HARRINGTON  
JOEL R. KASWELL  
KATHRYN R. SCHMELTZER  
DOUGLAS WOLOSIN  
BRIAN R. MOIR  
DAVID D. OXENFORD  
BARRY M. GOTTFRIED  
ANN K. FORD  
BRUCE D. JACOBS  
ELIOT J. GREENWALD

**RECEIVED**

FEB 12 1992

FLETCHER, HEALD  
& WILBRETH

BEN S. FISHER  
1980-1984  
CHARLES V. WAYLAND  
1980-1981

OF COUNSEL  
JOHN O. HEARNE

MCI MAIL FWCLOC



Ms. Donna Searcy  
February 11, 1992  
Page 2

application should be dismissed because it had no actual or apparent authority for making its filing and because there is a pending proposal to use the full height of the present structure.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Martin R. Leader", written in a cursive style.

Martin R. Leader

MRL/dp  
3070-014

cc: Edward W. Hummers, Jr., Esq.



**BAKER  
&  
HOSTETLER**  
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036 • (202) 861-1500  
FAX (202) 861-1783 • TELEX 2357276  
WRITER'S DIRECT DIAL NUMBER (202)

861-1580

February 19, 1992

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: FCC File No. BPH-911206IF

Dear Ms. Searcy:

This letter is submitted on behalf of Scripps Howard Broadcasting Company ("Scripps Howard") in opposition to the February 11, 1992 letter of Cunningham Communications, Inc. ("Cunningham") (copy enclosed) requesting that the Federal Communications Commission ("FCC" or "Commission") dismiss the above-referenced application of Nationwide Communications Inc. ("Nationwide"). In accord with Section 73.1690(b)(1) of the Commission's rules, Nationwide's application simply reports that the tower on which Nationwide's antenna rests has been reduced in height by forty feet and is now only 1209 feet above mean sea level.

Scripps Howard is interested in this matter because Cunningham's principals have filed a competing application against Scripps Howard's application for renewal of license for Station WMAR-TV in Baltimore. This competing application, filed under the name of Four Jacks Broadcasting Inc. ("Four Jacks"), proposes to

Ms. Donna R. Searcy  
February 19, 1992  
Page 2

Commission not to permit Cunningham's principals to benefit from their misconduct. Indeed, as shown below, sound agency practice requires that Nationwide's application be granted so that Cunningham's principals will not be permitted to escape appropriate administrative scrutiny of the Four Jacks application's proposal to add forty feet in height to an existing tower.

The first misstatement in Cunningham's letter is the claim that Nationwide, an FCC licensee, had no authority to correct erroneous information about its antenna tower's height. In fact, the FCC expressly requires its licensees to ensure that tower height data be kept accurate. See 47 C.F.R. §§ 73.1690(b)(1) and 17.7. Nationwide's application, which was filed contemporaneously with its notification to the FAA of the same facts, is the means specified by Section 73.1690(b)(1) for maintaining the accuracy of the FCC's antenna height records.

Cunningham's second misstatement is its false and dangerous suggestion that the FCC need not be advised of tower height reductions. No source is identified for the unsubstantiated claim in the February 11th letter that Cunningham was so "advised." In any event, the experienced communications counsel who filed Cunningham's letter is surely aware:

(1) that FCC and FAA rules make no distinction between height increases and decreases with respect to licensees' plain obligation to report all tower height alterations, see, e.g., 47 C.F.R. §§ 73.1690(b)(1), 17.7(a), 17.57, and 14 C.F.R. §§ 77.13(a)(1), 77.5(b); and

(2) that it is the Commission's unambiguous policy that tower height reductions as well as height increases may give rise to air hazard navigation issues, see, e.g., Abacus Broadcasting Corp., MM Dkt. No. 91-350, DA91-1481 (released December 5, 1991).

It is remarkable that Cunningham, an entity owned by principals who are both (1) applicants for a new FCC license and (2) current broadcast licensees, would present such a reckless and plainly false assessment of licensees' responsibilities.

Importantly, by its owners' own recent admission, Cunningham's tower apparently has been at a different height from that reflected in the FCC and FAA records for some period of time due to the actions of Cunningham's owners in relocating their Station WBFF-TV television antenna to a new location. See Four Jacks' Opposition to Petition to Deny (File No. BPCT-910903KE), filed February 12, 1992, at 4. Cunningham's principals wrongfully never reported that they had changed the tower's height either to the FCC, to the FAA,

Ms. Donna R. Searcy  
February 19, 1992  
Page 3

or to the National Ocean Service as required by FCC and FAA rules so that the tower's actual height would be accurately reflected in these agencies' databases and in the aeronautical charts based on these databases. This failure to keep the appropriate governmental bodies informed is a significant breach in Cunningham's owners' public interest responsibility (1) as the sponsor of the height change, see 14 C.F.R. 77.13(a)(1), and (2) as a Commission licensee, see 47 C.F.R. § 73.1690(b)(1) and § 17.57 (a rule whose express purpose is to protect "the interest of safety in air navigation").

Finally, Cunningham's February 11th letter misleadingly omits to disclose Cunningham's principals' true, improper purpose for seeking to have Nationwide's correction of the record dismissed. As noted above, it is Cunningham's owners themselves that are the undisclosed parties who filed the application (BPCT-910903KE) referenced in Cunningham's letter, the application on which their letter would have the FCC rely to find that no notification is required. Cunningham/Four Jacks thus is actually seeking to benefit from Cunningham's principals wrongful failure to report the change in tower height. By falsely claiming in its application that it would not raise the tower's height, Four Jacks seeks to avoid the regulatory scrutiny which necessarily attaches to proposals that would increase antenna heights.

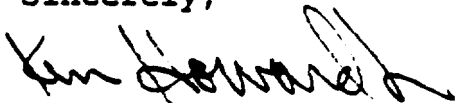
It is axiomatic that an applicant cannot be permitted to benefit from its own blatant misconduct. This is particularly true here where the benefit which Cunningham's principals seek to obtain is the avoidance of procedures designed to protect the safety of

Ms. Donna R. Searcy  
February 19, 1992  
Page 4

location. This fact is simply incontrovertible, and the tower's existing height must be accurately recorded in the FCC and FAA records so that proper procedures will be followed in processing Four Jacks' application. Scripps Howard is separately arguing in a Petition to Deny that Four Jacks' continuing pattern of misconduct in concealing the true height of this tower, inter alia, warrants the dismissal of its application.

Please contact the undersigned if you require any additional information.

Sincerely,



Kenneth C. Howard, Jr.  
Counsel to Scripps Howard  
Broadcasting Company

0749:2789  
9911091008  
Attachment

cc: Chief, Mass Media Bureau, FCC  
Chief, Video Services Division, FCC  
Chief, Television Branch, FCC  
Chief, Field Operations Bureau, FCC  
Chief, Public Service Division, FCC  
Chief, Antenna Survey Branch, FCC  
Mr. Harold Becker, FAA  
Mr. Frank Jordan, FAA  
Martin R. Leader, Esq.

## F. IER, WAYLAND, COOPER AND LEADER

1255 TWENTY-THIRD STREET, N.W.

SUITE 800

WASHINGTON, D. C. 20037-1170

TELEPHONE (202) 659-3494

TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

(202) 775-3788

SEN. S. FISHER  
(1980-1984)CHARLES V. WAYLAND  
(1980-1984)OF COURSE,  
JOHN O. FEARNE

MC. MAIL FWC100

SEN. C. FISHER  
GROVER C. COOPER  
MARTIN R. LEADER  
RICHARD R. ZARAGOZA  
CLIFFORD M. HARRINGTON  
JOEL R. KASWELL  
KATHRYN R. SCHWELTZER  
DOUGLAS WOLOSHIN  
BRIAN R. MOIR  
DAVID D. GREENFORD  
BARRY M. GOTTFRIED  
ANN K. FORD  
BRUCE D. JACOBS  
ELIOT J. GREENWALD  
CARROLL JOHN YUNG  
JOHN JOSEPH MEVEIGH  
BARRIE D. BERMAN  
JOHN R. HANE III  
BRUCE F. HOFFMEISTER  
MICHELLE N. FLETCHER  
SCOTT R. FLICK  
FRANCIS R. MONTERO  
GREGORY L. MASTERS  
MATTHEW P. ZINN  
ROBERT C. FISHER  
LAUREN ANN LYNN  
BRIAN J. CARTER  
GLENN S. REMARCO  
KELLY B. YARBIGH

NOT RECORDED IN D.C.

February 11, 1992

VIA HAND-DELIVERY:

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: FCC File No. BPH-911206IF

Dear Ms. Searcy:

This letter is written on behalf of Cunningham Communications, Inc., the owner of the tower specified in the above-referenced application. It has come to our attention that Nationwide Communications, Inc. ("Nationwide"), a lessee of antenna space on our tower, without knowledge or notice to us as the lessor/owner, has volunteered an application, the purpose of which is "to report a decrease in the height of the antenna supporting structure." (We have been advised that to effect a reduction in tower height no application is necessary.)

The purpose of this letter is to request that the Commission not change its database with regard to the height of the antenna structure because there is pending an application BPCF-910903KE which proposes to use the antenna structure presently authorized. We have been advised by the Commission staff that no notification with respect to tower height is necessary where there is a pending application to use the full height of the tower.





**BAKER  
&  
HOSTETLER**  
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500  
FAX (202) 861-1783 • TELEX 2357276  
WRITER'S DIRECT DIAL NUMBER (202) 861-1580

November 20, 1992

Mr. Dennis Williams  
Chief, FM Branch  
Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

NOV 20 5 03 PM '92